

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.5761 of 2000
ARJUN PRASAD AND ORS
Versus
STATE OF BIHAR

3/ 21.6.2010

Heard Shri Shakeel Ahmad Khan, learned senior counsel for the petitioners, Shree Deenu Kumar, learned counsel appearing for the wife – opposite party no. 2 and Shree Jharkhandi Upadhyaya, learned counsel for the state.

The petition has been filed seeking quashing of an order dated 2.11.2009 passed in Complaint Case no. 364 C of 2006 by which the learned trial judge rejected the prayer of the petitioners to discharge them from the trial by not framing charges under section 498A of the IPC.

The order was passed after considering the contentions of the petitioners which have been reproduced before this Court also that the learned court below did not have the power to proceed with the trial for lack of territorial jurisdiction as the offence under section 498A of IPC was not a continuing offence. It was further contended in the court below, as before this court, that the lady herself left the house of the husband and took shelter in her father's house and as such, in the light of the Supreme Court decision in Manish Ratan Vs. State of Madhya Pradesh, 2007(1) Supreme Court Cases 261, the court below was absolutely wrong in recording a finding that the lady resided at her father's house on account of being deserted by the husband and his relatives. The offence under section 498A of IPC was still continuing and that

created proper jurisdiction in the court below to proceed with the trial.

In a case of disputed fact as to whether the lady was deserted or walked out of her husband's house out of her own, it could be difficult for any court to rely on the decision referred to above. Since it is alleged that the lady was forced to go out of matrimonial house, it could always be imprudent to refer to *Manish Ratan (supra)* to seek the quashing of the proceeding and discharge the accused persons. The offence of cruelty may be confined to a single date but the ill treatment continues in various manner which may include disentitling the married lady of the status of being the house-wife of her husband and thereby enjoying the amenities which could be enjoyed by her in the matrimonial house. And, if it is alleged that she was forced to leave the matrimonial house on account of the acts of cruelty in connection with any other motive, then the offence could be continuing at the place where the lady might be taking shelter. There is clear finding recorded by the learned magistrate that the offence was continuing as she was forced to take shelter in her father's house. As such, the decision referred to above does not appear applicable to the facts of this case.

Many documents have been annexed with the present petition which are interlocutory orders passed in bail applications or in any other pending matrimonial proceedings. Those could not be based for discharging the accused persons. Law is well settled

that an accused could get discharged under section 245 of the Code of Criminal Procedure only when there is reason to believe that the charge is groundless. In other words, if the court comes to a conclusion that there was no substantial material to indicate that the accused persons had committed the offence, they could be discharged.

In the light of the above, the petition appears of no merit. It is accordingly dismissed.

Anil/

(**Dharnidhar Jha, J.**)

